

DOCKET SECTION

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

OPPOSITION OF UNITED STATES POSTAL SERVICE TO MOTION OF THE
MCGRAW-HILL COMPANIES THAT PORTIONS OF THE DOCKET NO. R84-1
REBUTTAL TESTIMONY OF WITNESS ORLANDO BE ENTERED INTO THE
RECORD OF THIS PROCEEDING
(March 24, 1998)

The United States Postal Service hereby opposes the Motion of the McGraw-Hill Companies that Portions of the Rebuttal Testimony by USPS Witness Orlando in Docket No. R84-1 be Entered into the Record as Evidence in this Proceeding, filed March 23, 1998 (*Motion*).¹ McGraw-Hill's motion is untimely and seeks to have portions of the Orlando testimony which were not cited by Mr. Young included in the record. Moreover, even the designations for those portions which were referred to by Mr. Young are either cumulative or imprecise. For these reasons, the McGraw-Hill Motion must be denied.

The Untimeliness of the Motion

The McGraw-Hill motion is clearly untimely. The due date for designations of material from previous dockets has long since expired and McGraw-Hill has presented nothing which would warrant any waiver concerning that date. As McGraw-Hill points out, Special Rule 1D generally requires that a party designate materials from prior cases for inclusion in the record at least 28 days before the date

¹ McGraw-Hill requests the inclusion of pages 1-2 (the autobiographical sketch); pages 5 through 9, line 15 (concerning the uniqueness of the Postal Service, its mail and its transportation system); pages 19, line 10 through 20 (concerning how Postal Service transportation managers deal with capacity, vehicle and trip issues to meet volume requirements); and pages 25 through 27 (concerning latent or unused capacity).

for the filing of the party's direct case. In fact, McGraw-Hill boasts that it complied with this requirement in designating an interrogatory response of Professor Bradley's from a previous docket. *Motion at 6, n.2.*

McGraw-Hill insists, however, that it could not comply in this instance because "the predicate for seeking admission of the R84-1 Orlando testimony did not arise until well thereafter, when the Postal Service filed witness Young's rebuttal testimony" *Id. at 6-7.* This is nonsense and, in fact, is expressly contradicted elsewhere in McGraw-Hill's motion. As is evident from its Motion, McGraw-Hill is really interested in the issue of unused capacity, as can be seen from the discussion beginning at the bottom of page 10 and continuing through page 11 of its Motion. In that very discussion, McGraw-Hill clearly reveals that it was aware of discussions of unused capacity since October 14, 1997—the date that both Professor Bradley and witness Nieto testified on transportation issues on behalf of the Postal Service. McGraw-Hill specifically states at page 11 of its Motion:

The Presiding Officer indicated in his colloquy with Postal Service witness Bradley that the "Commission of 1994 and subsequently" is open to these issues. Tr. 7/3848.

That gap has been filled in this case by TRACS data indicating a high level of unused capacity that has remained stable (on a system-wide basis) over time. See Tr. 7/3520-22 (Postal Service witness Nieto).²

² Although these citations clearly indicate that McGraw-Hill was aware of discussions in this Docket concerning unused capacity, McGraw-Hill does somewhat mischaracterize what was actually said in both of the quoted instances. As the Postal Service reads the portion of the transcript containing the exchange between Professor Bradley and Chairman Gleiman, it does not see where there was any express indication by the Chairman that the Commission is "open to these issues." Rather, Chairman Gleiman simply indicated that the idea that unused capacity varies with volume came from the *Commission of 1987-88, rather than the Commission of 1994 and thereafter.* With regard to the cited portion of witness Nieto's oral cross-examination, she indicated that the *percentage* of unused capacity, not the *absolute level or amount* of unused capacity, has remained relatively stable over time. It should be noted that this actually supports,

McGraw-Hill thus clearly had the time to designate the Orlando testimony and any other testimony relating to the issue of unused capacity shortly after October 14. Certainly, at the very latest, McGraw-Hill should have moved to designate the Orlando testimony on December 30, 1997, when it filed the testimony of its own witness Hehir, who explicitly stated:

This question may in turn relate to a broader cost allocation issue—most of the cubic capacity in the purchased highway transportation system is chronically unutilized, and the costs of the unutilized capacity are allocated to mail that does not necessarily cause that costs. We believe that this is arbitrary and unfair. As I testified in MC95-1, the costs of unutilized capacity fall disproportionately on those mailers that have only limited alternative to transportation by the Postal Service. The Commission should review the issue of whether those costs should be treated as “institutional” rather than attributable, either because they are caused by unique statutory obligations of the Postal Service (e.g., to provide universal service) or because they are, at least to a considerable degree, not volume-variable (a question that the Postal Service has not apparently studied).

Tr. 27/14712 (footnotes omitted).

McGraw-Hill clearly has not made a showing of “extraordinary justification” as is required by Special Rule 1D for these late designations. Moreover, allowing the testimony to be designated now, and with all parties concentrating on briefs, effectively deprives other parties of the right to object to the designation or to make thoughtful counter-designations.

Portions of the Orlando Testimony not Cited by Mr. Young Should Not Be Included

Portions of the Orlando testimony, which McGraw-Hill requests be made evidence in this proceeding, were not even referred to by Mr. Young. It is quite clear

rather than contradicts, the assertion that unused capacity varies with volume.

from Mr. Young's rebuttal testimony that he cited to the Orlando testimony for a very narrow proposition—that there are “significant differences between our operations and private sector carriers.” *Tr. 35/18859*. Mr. Young, in that section of his testimony, delineates some of those differences—the requirement of precise scheduling of postal transportation; the commitment to keep the mail secure; and the symbiotic relationship between the Postal Service and its highway contractors, with the Postal Service making extraordinary demands, but including contract provisions designed to ensure the viability of its contractors. *Id. at 18859–60*. There is not a word in that section about unused capacity.

Cognizant of this fact, McGraw-Hill constructs a vertigo-inducing standard for admission of the Orlando testimony—to paraphrase somewhat, “broad reliance or invoking by cross-reference.” *See Motion at 1 and 4*. The Postal Service will not attempt to retrace the tortuous path followed by McGraw-Hill in asserting that Mr. Young made far more use of the Orlando testimony than he did. *See Motion at 2–6*. To the extent that the Postal Service understands McGraw-Hill's standard for admission, however, it seems that carried to its logical extreme, it means that any time an attorney mentions evidence from a prior docket in cross-examination, or any time a witness makes reference to material from another docket, or any time a witness says anything that *remotely relates* to something mentioned in a prior docket, then that material should be admitted into evidence in the instant docket.³ Suffice it

³ McGraw-Hill's argument that a reference to testimony from a prior proceeding somehow gives that testimony the status of a library reference in the instant proceeding reflects a misunderstanding of the primary use of library references, which is to provide

to say that such a standard will increase the size of the record in any given docket to gargantuan proportions. Such a standard will also result in the relitigation of numerous issues, even in the absence of new evidence presented on those issues. Thus, clearly the portions of the Orlando testimony which contain an autobiographical sketch (pages 1 and 2), which concern how Postal Service transportation managers deal with capacity, vehicle and trip issues to meet volume requirements (pages 19, line 10 through 20), and which concern latent or unused capacity (pages 25 through 27) should not be admitted into evidence.

Even the Designations Arguably Related to Mr. Young's Testimony are Either Cumulative or Imprecise

As discussed previously, Mr. Young cited to the Orlando testimony for some very limited points. To the extent that some of the same points were made by Mr. Orlando in Docket No. R84-1, then the Orlando testimony is merely cumulative and is not truly needed in this record. Moreover, Mr. Young's testimony is of greater probative value, since it is more recent.

In addition, McGraw-Hill's designation of pages 5 through 9, line 15 is imprecise. On the one hand, the designation contains some information which clearly is not related to any point made by Mr. Young. For example, page 5, lines 7 through 13, talks about the number of Postal Service employees and the number of pieces of mail handled per day. Mr. Young does not discuss these matters in his testimony and certainly those figures have changed since 1984. On the other hand, there are

access to materials "when documentation or materials are too voluminous reasonably to be distributed." *Special Rule 5.*

sections on page 9, beginning at line 24 and carrying over to page 10, through line 17, where the Orlando testimony discusses security clearances for highway contractors and the indemnification and inflationary protection contract clauses. These issues are touched upon by Mr. Young, yet these sections have not been designated by McGraw-Hill.⁴

Thus, even the arguably relevant designations are problematic. The best solution is to allow Mr. Young's testimony to stand as it is.

Conclusion

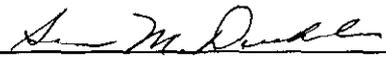
For all of the foregoing reasons, the McGraw-Hill motion must be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



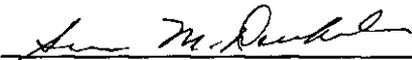
Susan M. Duchek

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2990; Fax -5402
March 24, 1998

⁴ Of course, this can be interpreted as supporting the Postal Service's earlier point that McGraw-Hill is really interested in the issue of unused capacity, and not in Mr. Young's discussion of the differences between the Postal Service and private sector carriers.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



Susan M. Duchek

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2990; Fax -5402
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